



August 2, 2000

Mr. D. Craig Wood  
Langley & Banack Inc.  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212-3166

OR2000-2918

Dear Mr. Wood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137922.

The North East Independent School District (the "district"), which you represent, received a request for a copy of the audiotape of the district's Board of Trustees' Level IV hearing on May 22, 2000. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Pursuant to section 551.001(3)(E) of the Government Code, a school district's board of trustees is a governmental body that is subject to the Open Meetings Act (the "Act"). See Gov't Code § 551.001(3)(E). Therefore, the district's board of trustees and its meetings fall under the Act. Section 551.074 of the Government Code, a provision of the Act, states that a governmental body under the Act is not required to conduct an open meeting to hear a complaint or charge against an officer or an employee unless that officer or employee who is the subject of the deliberation or hearing requests a public hearing. Gov't Code § 551.074(a)(2), (b). Based on your assertions, it does not appear that the employees who were the subjects of the grievance hearing requested a public meeting. Therefore, the district's board of trustees conducted a properly closed meeting pursuant to section 551.074(a)(2) and (b).

Additionally, section 551.103 requires that a governmental body must keep a certified agenda or make a tape recording of the proceedings of each closed session. Section 551.104 makes the tape of a properly closed meeting confidential. Furthermore, an audiotape recording of a closed meeting is available for public inspection and copying only under a court order.

Gov't Code § 551.104; Open Records Decision No. 495 at 4 (1988).<sup>1</sup> You state that the district's board of trustees maintains both a certified agenda and a tape recording of the board of trustees' sessions pursuant to section 551.103. You state that two tapes were made of the meeting at issue. We find that both of these tapes fall within the purview of section 551.104. Accordingly, we conclude that the requested information is confidential and must be withheld from public disclosure under section 552.101 in conjunction with section 551.104 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

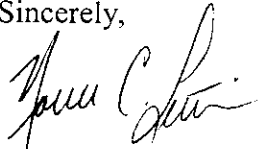
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<sup>1</sup>We note that this office did not review the responsive audiotape recording since it was not submitted, nor does it have the authority to do so. Open Records Decision No. 495 at 4 (1988) (Open Meetings Act provisions "remove certified agendas and tapes of executive sessions from review by the attorney general under the Public Information Act").

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noelle C. Letteri', written over a horizontal line.

Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 137922

cc: Mr. Jon C. Atkinson  
19609 Encino Crown  
San Antonio, Texas 78259  
(w/o enclosures)